

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2559

Introduced by Assembly Member Benoit

February 23, 2006

An act to amend Sections 191.5, 192, 192.5, 193, ~~193.5, and 193.7 and 193.5~~ of the Penal Code, ~~and to amend Sections 13350, 13350.5, and 13954 of the Vehicle Code,~~ relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2559, as amended, Benoit. Vehicles: driving under the influence: gross manslaughter.

(1) Existing law defines vehicular manslaughter as, among other things, driving a vehicle or operating a vessel in violation of specified provisions relating to driving or operating under the influence of alcohol, drugs, or both alcohol and drugs, driving with an excessive blood alcohol concentration, or driving while addicted to any drug (DUI), in the commission of an unlawful act, not amounting to a felony, but without gross negligence; or driving or operating in violation of the DUI provisions, in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence. Vehicular manslaughter, as specified, is a misdemeanor or a felony punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.

~~Existing law defines gross vehicular manslaughter while intoxicated as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle or operating of a vessel, where the driving or operating was in violation of the DUI provisions and the killing was~~

~~either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence. Gross vehicular manslaughter while intoxicated is a felony punishable by imprisonment in the state prison for 4, 6, or 10 years.~~

~~This bill would delete the definition of vehicular manslaughter specified above, and would recast the definition of gross vehicular manslaughter while intoxicated to include the above described offense where the intoxication was a contributing factor in the killing. The bill would provide a *increase* the term of imprisonment of 3, 5, or 7 years for gross vehicular manslaughter where intoxication is a contributing factor to 2, 4, or 6 years.~~

~~The bill would specify, as to gross vehicular manslaughter while intoxicated and operating a vessel, the operation of certain other water devices are included in the above described prohibition.~~

~~The bill would set forth legislative findings.~~

~~(2) Existing law, known as “the 3 strikes law” and codified in 2 initiative statutes, prescribes alternative prison sentencing for any person convicted of a felony who has one or more prior serious or violent felony convictions. The initiative statutes provide that any amendment of these provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature.~~

~~This bill would provide that a felony conviction of gross vehicular manslaughter where the intoxication was a contributing factor in the killing, as specified in (1) above, shall not constitute a current felony conviction for purposes of sentencing under the “3 strikes” provisions of those initiative statutes. Because the bill would constitute an amendment of those initiative statutes, the bill would require a $\frac{2}{3}$ vote.~~

(2) Existing law defines vehicular manslaughter as, among other things, the unlawful killing of a human being without malice aforethought in the operation of a vessel or manipulating or a water ski, an aquaplane, or a similar device while intoxicated, in the commission of an unlawful act, not amounting to a felony, or operated these devices while intoxicated, in the commission of a lawful act that might produce death. Existing law provides that these types of vehicular manslaughter with gross negligence are punishable by imprisonment in the state prison for 2, 4, or 6 years; and those without gross negligence are punishable either by imprisonment in

county jail for not more than one year or by imprisonment in the state prison for 16 months, or 2 or 4 years.

This bill would increase the term of imprisonment in the state prison for these types of vehicular manslaughter with gross negligence to 4, 6, or 10 years; and would provide that these types of vehicular manslaughter without gross negligence are punishable by imprisonment in the state prison for 2, 4, or 6 years.

(3) Existing law defines vehicular manslaughter as, among other things, the unlawful killing of a human being without malice aforethought in the operation of a vessel in the commission of unlawful act, not amounting to a felony, or operating a vessel in the commission of a lawful act that might produce death.

This bill would provide that the described vehicular manslaughter with gross negligence is punishable by imprisonment in county jail for not more than one year or by imprisonment in the state prison for 2, 4, or 6 years.

~~(3)–~~

(4) The bill would make conforming changes in related provisions of law.

~~(4)–~~

(5) Because the bill would expand the scope of existing crime and increase the penalties for existing crime, thereby increasing the level of services imposed on local law enforcement agencies, it would create a ~~state-mandated~~ state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 191.5 of the Penal Code is amended to*
2 *read:*

3 191.5. (a) Gross vehicular manslaughter while intoxicated is
4 the unlawful killing of a human being without malice
5 aforethought, in the driving of a vehicle, where the driving was in

1 violation of Section 23140, 23152, or 23153 of the Vehicle Code,
2 and the killing was either the proximate result of the commission
3 of an unlawful act, not amounting to a felony, and with gross
4 negligence, or the proximate result of the commission of a lawful
5 act ~~which~~ *that* might produce death, in an unlawful manner, and
6 with gross negligence.

7 ~~(b) Gross vehicular manslaughter while intoxicated also~~
8 ~~includes operating a vessel in violation of subdivision (b), (c),~~
9 ~~(d), (e), or (f) of Section 655 of the Harbors and Navigation~~
10 ~~Code, and in the commission of an unlawful act, not amounting~~
11 ~~to felony, and with gross negligence; or operating a vessel in~~
12 ~~violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of~~
13 ~~the Harbors and Navigation Code, and in the commission of a~~
14 ~~lawful act which might produce death, in an unlawful manner,~~
15 ~~and with gross negligence.~~ *Vehicular manslaughter while*
16 *intoxicated is the unlawful killing of a human being without*
17 *malice aforethought, in the driving of a vehicle, where the*
18 *driving was in violation of Section 23140, 23152, or 23153 of the*
19 *Vehicle Code, and the killing was either the proximate result of*
20 *the commission of an unlawful act, not amounting to a felony, but*
21 *without gross negligence, or the proximate result of the*
22 *commission of a lawful act that might produce death, in an*
23 *unlawful manner, but without gross negligence.*

24 (c) (1) Except as provided in subdivision (d), gross vehicular
25 manslaughter while intoxicated *in violation of subdivision (a)* is
26 punishable by imprisonment in the state prison for 4, 6, or 10
27 years.

28 (2) *Vehicular manslaughter while intoxicated in violation of*
29 *subdivision (b) is punishable by imprisonment in the state prison*
30 *for 2, 4, or 6 years.*

31 (d) ~~Any~~ A person convicted of violating ~~this section~~
32 *subdivision (a)* who has one or more prior convictions of this
33 section or of paragraph (1) ~~or (3)~~ of subdivision (c) of Section
34 192, subdivision (a) ~~or (e)~~ (b) of Section 192.5 of this code, or of
35 violating Section 23152 punishable under Sections 23540, 23542,
36 23546, 23548, 23550, or 23552 of, or convicted of Section 23153
37 of, the Vehicle Code, shall be punished by imprisonment in the
38 state prison for a term of 15 years to life. Article 2.5
39 (commencing with Section 2930) of Chapter 7 of Title 1 of Part

1 3 shall apply to reduce the term imposed pursuant to this
2 subdivision.

3 (e) This section shall not be construed as prohibiting or
4 precluding a charge of murder under Section 188 upon facts
5 exhibiting wantonness and a conscious disregard for life to
6 support a finding of implied malice, or upon facts showing
7 malice consistent with the holding of the California Supreme
8 Court in *People v. Watson*, 30 Cal. 3d 290.

9 (f) This section shall not be construed as making any homicide
10 in the driving of a vehicle or the operation of a vessel punishable
11 which is not a proximate result of the commission of an unlawful
12 act, not amounting to felony, or of the commission of a lawful act
13 which might produce death, in an unlawful manner.

14 (g) For the penalties in subdivision (d) to apply, the existence
15 of any fact required under subdivision (d) shall be alleged in the
16 information or indictment and either admitted by the defendant in
17 open court or found to be true by the trier of fact.

18 *SEC. 2. Section 192 of the Penal Code is amended to read:*

19 192. Manslaughter is the unlawful killing of a human being
20 without malice. It is of three kinds:

21 (a) Voluntary—upon a sudden quarrel or heat of passion.

22 (b) Involuntary—in the commission of an unlawful act, not
23 amounting to felony; or in the commission of a lawful act which
24 might produce death, in an unlawful manner, or without due
25 caution and circumspection. This subdivision shall not apply to
26 acts committed in the driving of a vehicle.

27 (c) Vehicular—

28 (1) Except as provided in *subdivision (a) of* Section 191.5,
29 driving a vehicle in the commission of an unlawful act, not
30 amounting to felony, and with gross negligence; or driving a
31 vehicle in the commission of a lawful act which might produce
32 death, in an unlawful manner, and with gross negligence.

33 ~~(2) Except as provided in paragraph (3), driving~~ Driving a
34 vehicle in the commission of an unlawful act, not amounting to
35 felony, but without gross negligence; or driving a vehicle in the
36 commission of a lawful act which might produce death, in an
37 unlawful manner, but without gross negligence.

38 ~~(3) Driving a vehicle in violation of Section 23140, 23152, or~~
39 ~~23153 of the Vehicle Code and in the commission of an unlawful~~
40 ~~act, not amounting to felony, but without gross negligence; or~~

1 ~~driving a vehicle in violation of Section 23140, 23152, or 23153~~
2 ~~of the Vehicle Code and in the commission of a lawful act which~~
3 ~~might produce death, in an unlawful manner, but without gross~~
4 ~~negligence.~~

5 ~~(4)–~~

6 (3) Driving a vehicle in connection with a violation of
7 paragraph (3) of subdivision (a) of Section 550, where the
8 vehicular collision or vehicular accident was knowingly caused
9 for financial gain and proximately resulted in the death of any
10 person. This provision shall not be construed to prevent
11 prosecution of a defendant for the crime of murder.

12 This section shall not be construed as making any homicide in
13 the driving of a vehicle punishable ~~which~~ *that* is not a proximate
14 result of the commission of an unlawful act, not amounting to
15 felony, or of the commission of a lawful act which might produce
16 death, in an unlawful manner.

17 “Gross negligence,” as used in this section, shall not be
18 construed as prohibiting or precluding a charge of murder under
19 Section 188 upon facts exhibiting wantonness and a conscious
20 disregard for life to support a finding of implied malice, or upon
21 facts showing malice, consistent with the holding of the
22 California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

23 *SEC. 3. Section 192.5 of the Penal Code is amended to read:*

24 192.5. Vehicular manslaughter pursuant to *subdivision (b) of*
25 *Section 191.5 and subdivision (c) of Section 192 is the unlawful*
26 *killing of a human being without malice aforethought, and*
27 *includes:*

28 (a) ~~Except as provided in subdivision (b) of Section 191.5,~~
29 ~~operating~~ *Operating a vessel in violation of subdivision (b), (c),*
30 *(d), (e), or (f) of Section 655 of the Harbors and Navigation*
31 *Code, and in the commission of an unlawful act, not amounting*
32 *to felony, and with gross negligence; or operating a vessel in*
33 *violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of*
34 *the Harbors and Navigation Code, and in the commission of a*
35 *lawful act which that might produce death, in an unlawful*
36 *manner, and with gross negligence.*

37 (b) ~~Except as provided in subdivision (c), operating a vessel in~~
38 ~~the commission of an unlawful act, not amounting to felony, but~~
39 ~~without gross negligence; or operating a vessel in the~~

1 ~~commission of a lawful act which might produce death, in an~~
2 ~~unlawful manner, but without gross negligence.~~

3 ~~(e)–~~

4 (b) Operating a vessel in violation of subdivision (b), (c), (d),
5 (e), or (f) of Section 655 of the Harbors and Navigation Code,
6 and in the commission of an unlawful act, not amounting to
7 felony, but without gross negligence; or operating a vessel in
8 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of
9 the Harbors and Navigation Code, and in the commission of a
10 lawful act ~~which~~ *that* might produce death, in an unlawful
11 manner, but without gross negligence.

12 ~~(d) This section shall become operative on January 1, 1992.~~

13 (c) *Operating a vessel in the commission of an unlawful act,*
14 *not amounting to a felony, and with gross negligence; or*
15 *operating a vessel in the commission of a lawful act that might*
16 *produce death, in an unlawful manner, and with gross*
17 *negligence.*

18 (d) *Operating a vessel in the commission of an unlawful act,*
19 *not amounting to a felony, but without gross negligence; or*
20 *operating a vessel in the commission of a lawful act that might*
21 *produce death, in an unlawful manner, but without gross*
22 *negligence.*

23 SEC. 4. *Section 193 of the Penal Code is amended to read:*

24 193. (a) Voluntary manslaughter is punishable by
25 imprisonment in the state prison for ~~three, six, or eleven~~ 3, 6, or
26 11 years.

27 (b) Involuntary manslaughter is punishable by imprisonment
28 in the state prison for two, three, or four years.

29 (c) Vehicular manslaughter is punishable as follows:

30 (1) A violation of paragraph (1) of subdivision (c) of Section
31 192 is punishable either by imprisonment in the county jail for
32 not more than one year or by imprisonment in the state prison for
33 two, four, or six years.

34 (2) A violation of paragraph (2) of subdivision (c) of Section
35 192 is punishable by imprisonment in the county jail for not more
36 than one year.

37 ~~(3) A violation of paragraph (3) of subdivision (c) of Section~~
38 ~~192 is punishable either by imprisonment in the county jail for~~
39 ~~not more than one year or by imprisonment in the state prison for~~
40 ~~16 months or two or four years.~~

~~(4)~~

(3) A violation of paragraph ~~(4)~~ (3) of subdivision (c) of Section 192 is punishable by imprisonment in the state prison for 4, 6, or 10 years.

SEC. 5. Section 193.5 of the Penal Code is amended to read:

193.5. Manslaughter committed during the operation of a vessel is punishable as follows:

(a) A violation of subdivision (a) of Section 192.5 is punishable ~~either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four, or six~~ 4, 6, or ten years.

(b) A violation of subdivision (b) of Section 192.5 is punishable by imprisonment in the ~~county jail~~ state prison for ~~not more than one year~~ two, four, or six years.

(c) A violation of subdivision (c) of Section 192.5 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for ~~16 months or two or~~ four, or six years.

(d) A violation of subdivision (d) of Section 192.5 is punishable by imprisonment in the county jail for not more than one year.

~~SECTION 1. Section 191.5 of the Penal Code is amended to read:~~

~~191.5. (a) The Legislature finds and declares that driving a vehicle in violation of Section 23140, 23152, or 23153 of the Vehicle Code is an inherently dangerous, unlawful, and grossly negligent act.~~

~~(b) (1) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.~~

~~(2) Gross vehicular manslaughter while intoxicated also includes the killing of a human being without malice aforethought in the operating of a vessel or other water device in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of~~

1 the Harbors and Navigation Code, and the killing occurred as a
2 proximate result of an unlawful or lawful act in the manner
3 described in paragraph (1).

4 (e) (1) Gross vehicular manslaughter while intoxicated is the
5 unlawful killing of a human being without malice aforethought,
6 in the driving of a vehicle, where the intoxication was a
7 contributing factor in the killing and the driving was in violation
8 of Section 23140, 23152, or 23153 of the Vehicle Code.

9 (2) Gross vehicular manslaughter while intoxicated also
10 includes the killing of a human being without malice
11 aforethought in the operating of a vessel or water device in
12 violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of
13 the Harbors and Navigation Code and the killing occurred where
14 the intoxication was a contributing factor in the killing in the
15 manner described in paragraph (1).

16 (d) (1) Gross vehicular manslaughter while intoxicated, as
17 described in subdivision (b), is punishable by imprisonment in
18 the state prison for 4, 6, or 10 years.

19 (2) Gross vehicular manslaughter while intoxicated, as
20 described in subdivision (c), is punishable by imprisonment in
21 the state prison for three, five, or seven years.

22 (e) A person convicted of violating this section who has one or
23 more prior convictions of this section or of paragraph (1) or (3)
24 of subdivision (e) of Section 192, subdivision (a) or (c) of
25 Section 192.5 of this code, or of violating Section 23152
26 punishable under Section 23540, 23542, 23546, 23548, 23550, or
27 23552 of, or convicted of Section 23153 of, the Vehicle Code,
28 shall be punished by imprisonment in the state prison for a term
29 of 15 years to life. Article 2.5 (commencing with Section 2930)
30 of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term
31 imposed pursuant to this subdivision.

32 (f) A felony conviction of gross vehicular manslaughter while
33 intoxicated, as described in subdivision (c), shall not constitute a
34 current felony conviction for purposes of subdivisions (b) to (i),
35 inclusive, of Section 667 or Section 1170.12.

36 (g) This section shall not be construed as prohibiting or
37 precluding a charge of murder under Section 188 upon facts
38 exhibiting wantonness and a conscious disregard for life to
39 support a finding of implied malice, or upon facts showing

malice consistent with the holding of the California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

(h) For the penalties in subdivision (e) to apply, the existence of any fact required under subdivision (e) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact.

SEC. 2.— Section 192 of the Penal Code is amended to read:

192.— Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:

(a) Voluntary—upon a sudden quarrel or heat of passion.

(b) Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

(c) Vehicular—

(1) Except as provided in Section 191.5, driving a vehicle in the commission of an unlawful act, not amounting to felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(2) Driving a vehicle in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.

(3) Driving a vehicle in connection with a violation of paragraph (3) of subdivision (a) of Section 550, where the vehicular collision or vehicular accident was knowingly caused for financial gain and proximately resulted in the death of a person. This provision shall not be construed to prevent prosecution of a defendant for the crime of murder.

This section shall not be construed as making a homicide in the driving of a vehicle punishable that is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act that might produce death, in an unlawful manner.

“Gross negligence,” as used in this section, shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon

1 facts showing malice, consistent with the holding of the
2 California Supreme Court in *People v. Watson*, 30 Cal. 3d 290.

3 SEC. 3. Section 192.5 of the Penal Code is amended to read:

4 192.5. Vehicular manslaughter pursuant to subdivision (c) of
5 Section 192 includes:

6 (a) Except as provided in subdivision (b) of Section 191.5,
7 operating a vessel in the commission of an unlawful act, not
8 amounting to felony, and with gross negligence; or operating a
9 vessel in the commission of a lawful act which might produce
10 death, in an unlawful manner, and with gross negligence.

11 (b) Operating a vessel in the commission of an unlawful act,
12 not amounting to felony, but without gross negligence; or
13 operating a vessel in the commission of a lawful act which might
14 produce death, in an unlawful manner, but without gross
15 negligence.

16 SEC. 4. Section 193 of the Penal Code is amended to read:

17 193. (a) Voluntary manslaughter is punishable by
18 imprisonment in the state prison for three, six, or eleven years.

19 (b) Involuntary manslaughter is punishable by imprisonment
20 in the state prison for two, three, or four years.

21 (c) Vehicular manslaughter is punishable as follows:

22 (1) A violation of paragraph (1) of subdivision (c) of Section
23 192 is punishable either by imprisonment in the county jail for
24 not more than one year or by imprisonment in the state prison for
25 two, four, or six years.

26 (2) A violation of paragraph (2) of subdivision (c) of Section
27 192 is punishable by imprisonment in the county jail for not more
28 than one year.

29 (3) A violation of paragraph (3) of subdivision (c) of Section
30 192 is punishable by imprisonment in the state prison for four,
31 six, or 10 years.

32 SEC. 5. Section 193.5 of the Penal Code is amended to read:

33 193.5. Manslaughter committed during the operation of a
34 vessel is punishable as follows:

35 (a) A violation of subdivision (a) of Section 192.5 is
36 punishable either by imprisonment in the county jail for not more
37 than one year or by imprisonment in the state prison for two,
38 four, or six years.

~~(b) A violation of subdivision (b) of Section 192.5 is punishable by imprisonment in the county jail for not more than one year.~~

~~SEC. 6. Section 193.7 of the Penal Code is amended to read:~~

~~193.7. A person convicted of a violation of paragraph (3) of subdivision (c) of Section 192 as that section read on January 1, 2007, or Section 191.5, that occurred within seven years of two or more separate violations of Section 23103, as specified in Section 23103.5, of, or Section 23152 or 23153 of, the Vehicle Code, or any combination thereof, that resulted in convictions, shall be designated as an habitual traffic offender subject to paragraph (3) of subdivision (c) of Section 14601.3 of the Vehicle Code, for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350 of the Vehicle Code.~~

~~SEC. 7. Section 13350 of the Vehicle Code is amended to read:~~

~~13350. (a) The department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:~~

~~(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.~~

~~(2) A felony in the commission of which a motor vehicle is used, except as provided in Section 13351, 13352, or 13357.~~

~~(3) Reckless driving causing bodily injury.~~

~~(b) If a person is convicted of a violation of Section 23152 punishable under Section 23546, 23550, or 23550.5, or a violation of Section 23153 punishable under Section 23550.5 or 23566, including a violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, as that section read on January 1, 2007, or Section 191.5 of the Penal Code, as provided in Section 193.7 of that code, the court shall, at the time of surrender of the driver's license or temporary permit, require the defendant to sign an affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5), (6), or (7) of subdivision~~

1 ~~(a) of Section 13352, and an acknowledgment of his or her~~
2 ~~designation as a habitual traffic offender. A copy of this affidavit~~
3 ~~shall be transmitted, with the license or temporary permit, to the~~
4 ~~department within the prescribed 10 days.~~

5 ~~(c) The department shall not reinstate the privilege revoked~~
6 ~~under subdivision (a) until the expiration of one year after the~~
7 ~~date of revocation and until the person whose privilege was~~
8 ~~revoked gives proof of financial responsibility as defined in~~
9 ~~Section 16430.~~

10 ~~SEC. 8. Section 13350.5 of the Vehicle Code is amended to~~
11 ~~read:~~

12 ~~13350.5. Notwithstanding Section 13350, for the purposes of~~
13 ~~this article, conviction of a violation of Section 191.5 of the~~
14 ~~Penal Code or of paragraph (3) of subdivision (c) of Section 192~~
15 ~~of the Penal Code, as that section read on January 1, 2007, is a~~
16 ~~conviction of a violation of Section 23153.~~

17 ~~SEC. 9. Section 13954 of the Vehicle Code is amended to~~
18 ~~read:~~

19 ~~13954. (a) Notwithstanding any other provision of this code,~~
20 ~~the department immediately shall suspend or revoke the driving~~
21 ~~privilege of any person who the department has reasonable cause~~
22 ~~to believe was in some manner involved in an accident while~~
23 ~~operating a motor vehicle under the following circumstances at~~
24 ~~the time of the accident:~~

25 ~~(1) The person had 0.08 percent or more, by weight, of alcohol~~
26 ~~in his or her blood.~~

27 ~~(2) He or she proximately caused the accident as a result of~~
28 ~~any act prohibited, or the neglect of any duty imposed, by law.~~

29 ~~(3) The accident occurred within five years of the date of a~~
30 ~~conviction for violating Section 191.5 of the Penal Code or~~
31 ~~paragraph (3) of subdivision (c) of Section 192 of the Penal~~
32 ~~Code, as that section read on January 1, 2007.~~

33 ~~(b) If an accident described in subdivision (a) does not result~~
34 ~~in a conviction or finding of violation of Section 23152 or 23153,~~
35 ~~the department shall suspend the driving privilege under this~~
36 ~~section for one year from the date of commencement of the~~
37 ~~original suspension. After the one-year suspension period, the~~
38 ~~driving privilege may be reinstated if evidence establishes to the~~
39 ~~satisfaction of the department that no grounds exist that would~~
40 ~~authorize the refusal to issue a license and that reinstatement of~~

1 the driving privilege would not jeopardize the safety of the
2 person or other persons upon the highways, and if the person
3 gives proof of financial responsibility, as defined in Section
4 16430.

5 (e) If an accident described in subdivision (a) does result in a
6 conviction or finding of a violation of Section 23152 or 23153,
7 the department shall revoke the driving privilege under this
8 section for three years from the date of commencement of the
9 original revocation. After the three-year revocation period, the
10 driving privilege may be reinstated if evidence establishes to the
11 satisfaction of the department that no grounds exist that would
12 authorize the refusal to issue a license and that reinstatement of
13 the driving privilege would not jeopardize the safety of the
14 person or other persons upon the highways, and if the person
15 gives proof of financial responsibility.

16 (d) A revocation action under subdivision (c) shall be imposed
17 as follows:

18 (1) If the accident results in a first conviction of a violation of
19 Section 23152 or 23153, or if the person was convicted of a
20 separate violation of Section 23152 or 23153 that occurred within
21 five years of the accident, the period of revocation under
22 subdivision (c) shall be concurrent with any period of restriction,
23 suspension, or revocation imposed under Section 13352,
24 13352.4, or 13352.5.

25 (2) If the person was convicted of two or more separate
26 violations of Section 23152 or 23153, or both, that occurred
27 within five years of the accident, the period of revocation under
28 subdivision (c) shall be cumulative and shall be imposed
29 consecutively with any period of restriction, suspension, or
30 revocation imposed under Section 13352 or 13352.5.

31 (e) The department immediately shall notify the person in
32 writing of the action taken and, upon the person's request in
33 writing and within 15 days from the date of receipt of that
34 request, shall grant the person an opportunity for a hearing in the
35 same manner and under the same conditions as provided in
36 Article 3 (commencing with Section 14100) of Chapter 3, except
37 as otherwise provided in this section. For purposes of this
38 section, the scope of the hearing shall cover the following issues:

1 ~~(1) Whether the peace officer had reasonable cause to believe~~
2 ~~the person had been driving a motor vehicle in violation of~~
3 ~~Section 23152 or 23153.~~

4 ~~(2) Whether the person had been placed under lawful arrest.~~

5 ~~(3) Whether a chemical test of the person's blood, breath, or~~
6 ~~urine indicated that the blood-alcohol level was 0.08 percent or~~
7 ~~more, by weight, at the time of testing.~~

8 ~~If the department determines, upon a hearing of the matter, that~~
9 ~~the person had not been placed under lawful arrest, or that a~~
10 ~~chemical test of the person's blood, breath, or urine did not~~
11 ~~indicate a blood-alcohol level of 0.08 percent or more, by weight,~~
12 ~~at the time of testing, the suspension or revocation shall be~~
13 ~~terminated immediately.~~

14 ~~(f) This section applies if the accident occurred on or after~~
15 ~~January 1, 1990, without regard for the dates of the violations~~
16 ~~referred to in subdivisions (a) and (d).~~

17 ~~(g) Notwithstanding subdivision (f), if a person's privilege to~~
18 ~~operate a motor vehicle is required to be suspended or revoked~~
19 ~~pursuant to this section as it read before January 1, 1990, as a~~
20 ~~result of an accident that occurred before January 1, 1990, the~~
21 ~~privilege shall be suspended or revoked pursuant to this section~~
22 ~~as it read before January 1, 1990.~~

23 ~~SEC. 10.~~

24 *SEC. 6.* No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the
29 penalty for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition of a
31 crime within the meaning of Section 6 of Article XIII B of the
32 California Constitution.